

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

11 Cr. 896 (PGG)

-v-

:

JOHN VALLEJO,

:

Defendant.

:

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SENTENCING MEMORANDUM FOR MR. JOHN VALLEJO

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May 20, 2013

Hon. Paul G. Gardephe  
United States District Judge  
Southern District of New York  
United States Courthouse  
500 Pearl Street  
New York, New York 10007

**Re: United States v. John Vallejo**  
**11 Cr. 869 (PGG)**

The Hon. Judge Gardephe:

John Vallejo is scheduled to be sentenced by the Court on May 31, 2013 following his plea of guilty to one count of conspiracy to commit Hobbs Act Robbery in violation of Title 18, U.S.C. § 1951 (c). The sentencing guideline range for Mr. Vallejo's offense is 46-57 months, based on an Adjusted Offense Level of 23 and a Criminal History Category of I.

John Vallejo is a 23 year old citizen of the United States of America who is the youngest of four siblings. John Vallejo was raised by his parents Gaspar Vallejo and Ofelia Mendoza who "spoilt" him. PSR ¶ 49. Ironically, the very parents who indulged their youngest child also involved him in this very serious offense - conspiracy to commit a robbery. As discussed in greater detail below, Gaspar Vallejo Sr., wanted his son to follow in his footsteps, and gave his son his first job as a mechanic in his auto body shop and his second job - participating in a criminal conspiracy.

Although John Vallejo must be punished for the decisions he made, he also needs mental health services and very close monitoring to ensure that he complies with the help that the Department of Probation will be able to give him upon his release from prison. A just and rational sentence for Mr. Vallejo would be a term of 24 months coupled with a lengthy period of supervised release that includes

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strict requirements to participate in supervised mental health counseling with a focus on anger management.

### **Statement of Facts**

#### **Personal History**

John Vallejo was born in Bronx, New York in 1989 to Gaspar Vallejo and Ofelia Mendoza. Shortly after John was born, his mother's relationship with John's father began to deteriorate and eventually ended. It remains unclear why the relationship ended but Ms. Mendoza became upset by this development and found herself overcompensating by spoiling her children. A young mother, she fretted over the separation and worried that her boys would choose their father over her. Accordingly, when John was a teenager, he had little discipline and structure.

As a young boy, John Vallejo lived with his mother until her diabetes resulted in complications which affected her daily life. Her acute diabetes left her legs and feet swollen and in pain. Ofelia could not care for her children, especially her active youngest son. John was sent to live with his father, Gaspar Vallejo Sr., who was simply not a positive influence for any of his children. Unfortunately, he was a strong influence on the choices his children made as adults. According to the PSR and there is no dispute about this fact from the government, John was influenced by his father. My father taught me how to be a "man." PSR ¶ 50.

Ofelia Mendoza, now 43, is on disability. She is unable to work due to her poor health, and has long depended on her son for both financial and daily support. Ms. Mendoza lives in a lower middle-class neighborhood in the Bronx. She is a caring person who, by all accounts, did the best she could to provide her children with a good upbringing. Unfortunately, because she could not finish raising her children, as a teenager, John was influenced by his father and his values.

Based on counsel's observations, Mr. Vallejo is easily influenced, and very malleable. From the moment John Vallejo went to live with his father, he was guided by his father in the choices he was given and the choices he made in his life. PSR ¶ 60. It comes as

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no surprise to anyone that the son who worked in his father's mechanic shop, also, at his father's asking, did what his father asked of him and agreed to participate in this illegal and dangerous conspiracy to rob a drug dealer.

### **The Offense Conduct**

From the time he was a teenager, John Vallejo worked for either his father or his uncle. PSR ¶¶ 59-62. To accommodate his mother's health and her medical needs, John Vallejo worked at jobs that allowed him to spend time with his mother. PSR ¶ 61. As a teenager and then as a young man he worked in his father's mechanic shop - Vallejo Auto Repair. A good employee, he was a supervisor at Hunts Point Auto Glass for over a year, a job he left to return to work at his father's mechanic shop. John Vallejo, of course, was easily influenced by his father and older brother both of who have a long criminal history.

In August of 2011, John Vallejo was working as a mechanic in his father's mechanic shop. Before long, John's father (Gaspar Vallejo Sr.) and his uncle (Julio Vallejo) had a different job for him. They had hatched a plan to rob a group of drug dealers of their cocaine.

As this Court has noted, this was a "sting operation." There were no drugs and no drug dealers to rob. Sentencing Transcript of Gaspar Vallejo Sr., attached as Exhibit B. During August and September of 2011, Julio and Gaspar Sr. had been planning a robbery with an undercover police officer who was posing as a disgruntled worker for a narcotics trafficking organization and as someone who was interested in robbing his boss. Julio Vallejo, who was then incarcerated at FCI, Fort Dix, put the undercover in touch with his uncle, Gaspar Vallejo Sr., who in turn recruited his two sons, John and Gaspar Jr. into another trade - robbing drug dealers.

There is no doubt, and this Court has noted, that the planner and executioner of this scheme was Gaspar Vallejo Sr.:

As to culpability, it is my conclusion that the defendant [Gaspar Vallejo Sr. is the most culpable of the defendants charged in the case. It was the defendant [Gaspar Sr.] who followed up on his brother's request to put a team together to commit the

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robbery; it was the defendant who conducted the bulk of the preliminary discussions with the undercover officer; and it appears to have been the defendant who enlisted two of his sons, as well as other men, to commit the robbery, although he chose not to go himself on the day of the purported robbery.

Exhibit B at page 23.

Recruited by his father, John Vallejo himself, a father to two young children, joined up with the rest of his family to participate in this sting robbery. On September 19, 2012, only a small portion of the Vallejo family showed up to rob a drug dealer of his cocaine. Gaspar Sr. chose not to show up for the robbery itself, and instead let his son do the truly dangerous work - get guns and show up for the robbery. Two others were recruited in Gaspar Sr. and Gaspar Jr.'s stead. The police were prepared for their arrival but unprepared for Gaspar Sr.'s absence. After a brief conversation, and an accommodation of the changed plans, John Vallejo, and others set out to commit the robbery and were arrested.

During the arrest process, John Vallejo who was the driver of the car, tried to flee. In a moment of pure panic, he accelerated and tried to get away. He failed. In the process, he could have, but did not, injure law enforcement. John Vallejo was shot by police officers, arrested and taken to the hospital for medical treatment.

#### **Post-Arrest Conduct**

Mr. John Vallejo has been detained at the Metropolitan Detention Center ("MDC") since his arrest in September of 2011. His time in jail has been marked by the persistent belief that other inmates are seeking to harm him, and was in fact in a fight with another inmate at the MDC. The Court should not draw a negative conclusion about Mr. Vallejo and his character from this incident, which occurred in a pre-trial detention facility. It does appear that Mr. Vallejo has some unresolved anger management issues, and those are best addressed through counseling and supervised release. A longer period of incarceration is not going to provide him with the type of intervention and help he needs.

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### **Letters of Support**

Mr. Vallejo's mother, Ofelia Mendoza; his sister, Marlin Cruz; his step-son Jacob Brito, have all written letters of support for John. These letters convey a common theme: John is a good person who has always been kind and supportive of his mother's need. As she notes in her letter, John was a very good son to her. "Every day in the afternoons he passes by my house to see how I am doing or if I need anything. Before he was in jail, when I would get sick he would take me to the hospital, he buys me my medicine. He would give money, very little but it would help a lot." Letter from Ofelia Mendoza, Exhibit A.

John was an equally responsible father to the three children he was helping raise. All of his relatives and friends recognize his deep commitment to his family that his first offense was one he did not seek out but was introduced to him by his father. See, Exhibit C. Particularly noteworthy is the letters from the young Jacob Brito (10 years old) and Erica Rivera, who is 15 years old. Both speak to how John Vallejo befriended his now girlfriend Gloria Ortiz, helped her get out of an abusive relationship, and made sure that her children were safe during the time she was healing. John Vallejo is father to three children, including his step-son, Jacob. John supported them all - financially and emotionally.

### **Sentencing Guideline Range**

The sentencing guideline range for the offense is 46-57 months based on a Criminal History Category of I and an Adjusted Offense Level of 22. PSR, ¶¶ 32-42, 68. These calculations are consistent with the plea agreement and are not disputed.

The Probation Office recommends a sentence of 57 months, primarily because Mr. Vallejo "attempted to drive away from the scene" and because that action by Mr. Vallejo was motivated by "the anticipated monetary gain and to avoid arrest." PSR page 17. Because John Vallejo did not seek out this robbery, has no prior criminal history, and has strong community ties, we believe that a sentence of 24 months is appropriate and no greater than necessary to address the sentencing objectives of general deterrence and punishment.

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There is a simple explanation for Mr. Vallejo's flight; he was scared and panicked by the events as they unfolded. A knee jerk acceleration of the gas pedal is a quintessential act of panic. It is not a thinking act. It was not an act undertaken with malice or with an intent to harm another, and therefore not a proper basis to enhance an individual's sentence.

The Court should ignore Probation's comment (page 17 of the PSR) that Mr. Vallejo sought to "endanger" the lives of law enforcement. There is nothing in the evidentiary record that supports such a statement by the probation officer. Nor is the government (who has the best access to these facts) supporting probation's position. To the contrary, the government recognizes that Mr. Vallejo was in a state of pure panic and tried to get away. The government is not arguing that Mr. Vallejo attempted to harm or took steps that were specifically designed to harm law enforcement. There was never any intent to hurt another, and the government concurs with us.

#### **Argument**

This is a hard case, but it is not a complicated one. John Vallejo is very much a product of, and a reflection of his environment and his upbringing. The robbery he was about to commit is totally at odds with his character, and not an offense he sought out. Rather, the robbery is a direct result of being recruited by his father whom he loved and trusted.

The above propositions are not open to serious dispute. The government and probation are unanimous in their conclusion that this sting robbery started with Julio Vallejo and was directed by Gaspar Vallejo Sr. And, of course, the observations of those closest to him confirm that prior to this conduct, John Vallejo had worked his entire life. John Vallejo started working when he was 17 years old and has worked ever since. PSR ¶¶ 60-62. Mr. Vallejo's work history is interesting in the story it tells - each time John Vallejo had a good job outside of his father's garage, he left it to return to work for his father. To elucidate, from 2009 to 2010, John had a good job working for Hunts Point Auto Glass. He was a supervisor and was doing well. Instead of continuing with the company, John left that job to go work for his father. PSR ¶ 62.

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the basis for added punishment. His actions were not premeditated and were not taken with the intent to harm another.

At the end of the day, the Court is primarily left with the question as to whether how much prison time is necessary and whether a longer period in jail or release on strict conditions of supervised release are more likely to benefit the defendant who is a citizen of the United States and his community.

For the above reasons, the answer is the latter.

Respectfully submitted,

  
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cc: A.U.S.A. Parvin Moyne



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Without his father, and left to his own devices, John Vallejo may never have been involved in this conspiracy. There isn't any real doubt that the crime of conviction is the direct product of Mr. Gaspar Sr.'s greed and misjudgment. It is patently apparent that but for his father, John Vallejo would not have been part of this offense conduct.

The hard part of sentencing is to fashion a punishment that takes into account both Mr. John Vallejo's vulnerability and the crime he committed. We are mindful that the Court has to consider the safety of the community as well as the need for John Vallejo to receive help when fashioning a sentence. Resolving this issue requires the Court to balance two competing concerns.

On the one hand, as amply demonstrated above, John Vallejo is in need of sustained and intensive reform. The Bureau of Prisons is simply not very well-situated to provide such reformation through counseling or therapy. Prisons focus on security and control. As demonstrated by Mr. Vallejo's experience at the MDC over the past year, prisoners are unlikely to receive any type of training or therapy that helps them address their issues. On the other hand, it is equally clear that John Vallejo must be punished for the decisions he made as a 23 year old adult to join his father in this conspiracy. Given these factors, the best way to both protect the community and to John Vallejo is to impose a sentence of 24 months followed with intensive conditions of supervised release focused on counseling.

Sentencing someone like John Vallejo is not a simple task. Many of the factors enumerated in Title 18, U.S.C. § 3553(a) are of little use in arriving at an appropriate sentence. Notions of deterrence, either general or specific, or punishment or promoting respect for the law have scant relevance to someone who has acted out of powerful but irrational fealty towards their father. On the one hand, John Vallejo did not seek out this (or any other) crime. But for his half-cousin and his father, John would still be working as a mechanic, supporting his family and helping his mother. On the other hand, John Vallejo could have, and should have, stood up to his father and simply refused to participate in his hair-brained but dangerous scheme to rob a drug dealer. Similarly, instead of panicking and trying to run from law enforcement, John should have surrendered to their authority. On the other hand, his impulsive and panicked reaction should not be